

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 27, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

11HD-063

Hawaii

Mutual Cancellation of General Lease No. S-4004 and Issuance of a Direct Lease to Christ Lutheran Church of Hilo, Hawaii for Church and Allied Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-001:120.

APPLICANT:

Christ Lutheran Church of Hilo, Hawaii, a Hawaii non-profit corporation.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea situated at South Hilo, Hawaii, identified by Tax Map Key: (3) 2-4-001:120, as shown on the attached map labeled Exhibit A.

AREA:

3.101 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: RS-10

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by General Lease No. S-4004, Christ Lutheran Church, Lessee, for church and allied purposes. Lease to expire on August 15, 2031. Last rental reopening occurred on August 16, 1996. Rent is currently \$2,940.00 per year.

LEASE TERM:

Sixty-five (65) years.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

\$480.00 per annum.

METHOD OF PAYMENT:

Semi-annual payments in advance.

RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, 50th and 60th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – electricity, telephone, water

Slope – Level

Elevation – 100'

Rainfall – 100" per year

SCS Soil Series – Not applicable

Land Study Bureau – Not Applicable

Legal access to property – Staff has verified that there is legal access to the property off of Kapiolani Street

Subdivision – Staff has verified that the subject property is a legally subdivided lot.

Encumbrances – General Lease No. S-4004 to Christ Lutheran Church

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

None.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

See Exhibit B attached.

BACKGROUND:

At its meeting of April 15, 1966, Item F-17, the Board of Land and Natural Resources approved the sale of a lease at public auction covering the subject land for church and allied purposes. The lease term was 65 years. Christ Lutheran Church of Hilo, Hawaii (Applicant) was the successful bidder at auction held on August 16, 1966 and General Lease No. S-4004 was thereafter issued to Applicant with an initial annual rental of \$1,214.00.¹

The lease required Applicant to complete construction of a church facility on the land at a minimum cost of \$125,000 within three years from the date of sale. The file shows that a church and parsonage were constructed on the land as of April 1, 1968 in accordance with plans approved by the Chairperson at a cost exceeding this threshold. Applicant has used the land and improvements for church and allied purposes since that time, and has made additional improvements to the land in accordance with plans approved by the Chairperson.

General Lease S-4004 provides for periodic rental reopenings established by independent appraisal on the 15th, 30th and 45th years of the lease term. The last rental reopening in 1996 established the annual rent at \$2,940.00. A rental reopening is scheduled for

¹ Applicant's full legal name is Christ Lutheran Church of Hilo, Hawaii. For reasons that are not clear from the file, the shorter version of Christ Lutheran Church was used in the preparation of the lease. A review of Department of Commerce and Consumer Affairs records shows that Applicant was incorporated in Hawaii on October 28, 1955 and has not had a name change since that time.

August 16, 2011. However, in June 2010, Applicant submitted its request to cancel the current lease and obtain a new 65-year lease by direct negotiation at \$480.00 per year, which is the minimum rent available to charitable organizations under current Board policy.

ANALYSIS:

The highest and best use allowable under County of Hawaii zoning is the existing use. Applicant is not proposing to change the use. Applicant has provided evidence of Internal Revenue Code Section 501(c)(3) status, as well as information on its operations, services, program measurements, budget and funding. A redacted copy of Applicant's Application and Qualification Questionnaire for non-profit status is attached as Exhibit C. As of April 20, 2011, Applicant is compliant with all lease terms and conditions. Rent is paid up to June 15, 2011. Liability insurance expires on October 2, 2011. At its meeting of April 22, 1983, Item F-2, the Board waived the performance bond requirement for the lease.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated with the last five years due to non-compliance with such terms and conditions.

Staff is recommending that the new lease be issued for 65 years, which is the maximum term the Board can approve for this type of disposition.

DISCUSSION:

As indicated above, General Lease No. S-4004 required Applicant to pay market rent as determined by periodic independent appraisal. However, by statute and current Board policy, the Board is authorized to lease State lands to qualifying eleemosynary (charitable) organizations at nominal rent. The statutory authority is as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

A section 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while a section 501(c)(3) organization is a privately organized charitable organization.

When considering lease dispositions to, or rental reopenings for, eleemosynary organizations, the Board may therefore set the rent by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the minimum rent for a lease to a charitable organization be no less than \$480 per year. Staff believes "nominal rent" under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent and the minimum rent of \$480 per year. In order to have a standard nominal rent for qualifying non-profit tenants, staff generally recommends rent be set at \$480 per year.

Applicant's application includes evidence of its 501(c)(3) status. In the past three years, Applicant has not been issued any notices of default for rent, insurance or other lease matters.

Comments were solicited from the agencies indicated below regarding the proposed action. Any responses received will be addressed in the final submittal.

Agency	Response
DLNR-Engineering	No objection to the proposed action. Project is located in Flood Zone X according to the Flood Insurance Rate Map.
Office of Hawaiian Affairs	No response.
Planning Department, County of Hawaii	No comments.

The Board waived the performance bond requirement for General Lease No. S-4004 at its meeting of April 22, 1983, Item F-2. If the Board approves nominal rent for the new lease, staff believes it is appropriate that the new lease require a performance bond, which will be calculated at two times the annual rent pursuant to the standard lease conditions.

RECOMMENDATION:


That the Board:

1. Authorize the mutual cancellation of General Lease No. S-4004, Christ Lutheran Church, covering the subject land under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current mutual cancellation of lease document form, as may be amended from time to time;
 - B. The cancellation instrument shall reflect the full legal name of Applicant:

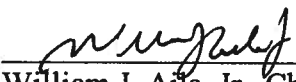
Christ Lutheran Church of Hilo, Hawaii;

- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Authorize the issuance of a direct lease to Christ Lutheran Church of Hilo, Hawaii covering the subject land under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current non-profit lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


for Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson



NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Mutual Cancellation of General Lease No. S-4004 and Issuance of a Direct Lease to Christ Lutheran Church of Hilo, Hawaii for Church and Allied Purposes

Project Number: PSF No. 11HD-063

Project Location: Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-001:120

Project Description: Issuance of a Direct Lease to Christ Lutheran Church of Hilo, Hawaii for Church and Allied Purposes

Consulted Parties: Department of Land and Natural Resources, Engineering Division; County of Hawaii Planning Department

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."


The cancellation of General Lease No. S-4004 and the issuance of the new lease to Christ Lutheran Church of Hilo, Hawaii

EXHIBIT B

(Applicant) is intended merely to allow Applicant to qualify for nominal rent, as opposed to market rent, that is available to other charitable organizations under the current policy of the Board of Land and Natural Resources. The Applicant will continue the operation of the church and related facilities that began in 1968, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

Recommendation:

The issuance of a new lease to Applicant to continue an existing use in itself will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed lease is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's proposed use of the lands, Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.



William J. Aila, Jr., Chairperson



Date

APPLICATION AND QUALIFICATION QUESTIONNAIRE
(Non-Profit)

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number.

Part I: General Information

1. Applicant's legal name: Christ Lutheran Church of Hilo, Hawaii
2. Applicant's full mailing address:
595 Kapiolani St. , Hilo, HI 96720
3. Name of contact person: () Treasurer _____
Contact person Phone No.: (808) , Fax No.: (808) _____
4. Applicant is interested in the following parcel:
Tax Map Key No.: (3) 2-4-001-120__ Location: 595 Kapiolani St. Hilo, HI _____
If Applicant is current lessee: General Lease No.: S-4004 _____
5. When was Applicant incorporated? 10/28/1955
6. Attach the following:
 - A. Articles of Incorporation
 - B. Bylaws
 - C. List of the non-profit agency's Board of Directors
 - D. IRS 501(c)(3) or (c)(1) status determination
 - E. Tax clearances from State of Hawaii and respective county Real Property Tax Office.
 - F. Audited financial statements for the last three years. If not audited, explain why.
Audit by outside CPA firm not required. Three years of internally prepared and accepted 12/31/xx statements attached.
If Applicant is a new start-up, attach projected capital and operating budgets.
 - G. Any program material which describes eligibility requirements or other requirements to receive services

Part II: Qualification

7. Is Applicant registered to do business in Hawaii: Yes
8. Has Applicant received tax exempt status from the Internal Revenue Service? Yes
9. Is Applicant licensed or accredited in accordance with federal, State or county statutes, rules, ordinances, to conduct the proposed activities? N/A

List all such licenses and accreditations required: _____

10. Is Applicant in default or otherwise not in good standing with any State No

department (e.g. POS agency, DCCA, DLNR, etc.)?

If yes, explain:

11. Has Applicant had a State of Hawaii lease, permit, license, easement or sale in fee cancelled within the last five years? If yes, list: No

<u>Doc. No.</u>	<u>Type of Agreement</u>	<u>Term of Agreement</u>
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12. Does Applicant have any policies which discriminate against anyone on the basis of race, creed, color, national origin, sex or physical handicap? No

If yes, explain:

13. Has Applicant received funding from a federal, State, or county government agency, the Aloha United Way, and/or a major private foundation within the last three years? Please list all such contracts below: No

<u>Agency</u>	<u>Contract Term</u>	<u>Contract Amount</u>
<hr/>	<hr/>	\$ <hr/>
<hr/>	<hr/>	\$ <hr/>
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14. If Applicant has not received funding from a federal, State or county government agency, the Aloha United Way and/or a major private foundation during the past three years, describe Applicant's qualifications to effectively perform the proposed services, including but not limited to, grants or subsidies received from non-major, private funders and/or staff or Board members who possess significant experience in Applicant's service field.

Church operates with contributions from members and other attendees

Part III: Program Activities and Persons to be Served

15. What activities will be conducted on the premises to be leased?
Church related activities

16. What are the specific objectives of these activities?
Disseminating the Gospel

17. Describe the community need for and the public benefit derived from these activities.
Only Lutheran Church on the east side of the island of Hawaii

18. Describe the targeted population for these activities by: 1) age group, 2) gender, 3) ethnic background, 4) income level, 5) geographic location of residence, 6) special needs/disability, and 7) other applicable characteristic(s).
Anyone who wishes to worship in a Lutheran congregation

19. Describe all eligibility requirements of clients to participate in the activities, e.g. age, income level, ethnic background, income level, disability, etc.
Anyone who wishes to worship in a Lutheran congregation

20. Do you require membership to participate in these activities?
If yes, list the requirements of becoming and remaining a member:

No

21. How many unduplicated persons will engage in the activities annually?

Activity

Persons Per Year

Church Services

250-300

22. Is State funding made available for the activities to be conducted on the leased premises?

No

If yes, by which State agency: _____

23. List all activities to be conducted on the leased premises which require payment of excise taxes, e.g. subleasing, sale of products or services. Include an estimate of annual gross revenues from each activity.

Periodic fundraising when necessary – have not had for several years.

Development of the Land

24. Describe the proposed site development plan for the property, indicating the location and size of buildings, parking areas, landscaped areas and related uses. Attach sketch of plan if available.
No changes to what is already built on the land, a sanctuary, a parsonage and a meeting hall.

25. What improvements to the land do you intend to make and at what cost?

No changes anticipated at this time

26. How will the improvements be funded?

N/A

27. Describe all environmental, land use and other permitting requirements which must be met to develop the land as proposed.
N/A

28. Will you be subleasing any portion of the property? If yes, describe the sublease uses:
No

Part V: Notarized Certification

I/We hereby certify that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, I/we may be disqualified from receiving a lease or my/our lease may be canceled.

Christ Lutheran Church of Hilo, Hawaii

Applicant Name

Applicant Name

By: _____

By: _____

Its: Treasurer _____

Its: _____

Date: 6/21/10

Subscribed and sworn to before me this
21st day of June, 2010.

Lynne Furutani
Notary Public

County of: Hawaii

State of: Hawaii

My commission expires: 7/7/13

Doc. Date: 6/21/10 # Pages: 5

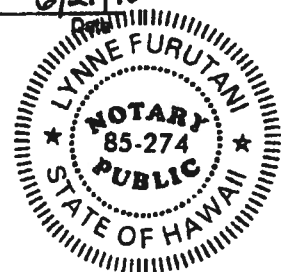
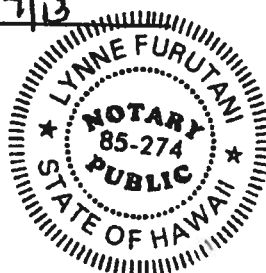
Name: Lynne Furutani Third Circuit

Doc. Description: Application &

Qualification Questionnaire

Lynne Furutani 6/21/10
Signature Date

My commission expires: 7/7/13
NOTARY CERTIFICATION



**8.400:
IRS Rulings**

**8.405:
Federal Tax Exemption**

Internal Revenue Service

Department of the Treasury

District
Director

230 South Dearborn Street
Chicago, IL 60604

The Lutheran Church-Missouri Synod
Attn: George Horensky
1333 South Kirkwood Road
St. Louis, Missouri 63122

Date: JUN 03 1992

Re:

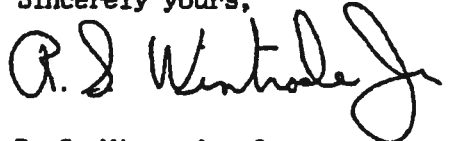
Gentlemen:

By means of a letter dated July 23, 1941, issued to you under your name at the time (Evangelical Lutheran Synod of Missouri, Ohio and Other States), you were determined to be organized and operated so as to be entitled to be exempt from federal income tax, and to be entitled to receive gifts for which the donors could claim deductions for federal income, gift and estate tax purposes. By means of a letter dated January 8, 1965, certain "subordinate" units were included in a group ruling, excluding, however, your commissions, committees, councils and your radio station, KFVO, all of which were observed to be merely activities of yours and not separate entities.

The purposes of this letter is to assure you that the Synod, including its boards, commissions, committees and councils, and any radio and television broadcast licenses owned by it and not structured as a corporation separate from the Synod, is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, is not required to file federal income tax returns, and contributions to which are deductible by donors as provided in Section 170, 2055, 2106, and 2522 of the Code.

Finally, you may refer to this letter by its date in referring to our determination that you are an exempt organization.

Sincerely yours,



R. S. Wintrobe, Jr.
District Director